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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 RIO TINTO PLC,

4 Plaintiff,

5 v.

14 Civ. 3042 (RMB)

6 VALE, S.A., et al.,

Conference

7 Defendants.

8 -----x

New York, N.Y.  
March 2, 2015  
2:30 p.m.

9 Before:

10 HON. RICHARD M. BERMAN

11 District Judge

12 APPEARANCES

13 QUINN EMANUEL URQUHART & SULLIVAN LLP

14 Attorneys for Plaintiff

15 BY: ERIC C. LYTTLE

MICHAEL J. LYLE

16 CLEARY GOTTlieb STEEN & HAMILTON LLP

17 Attorneys for Defendant Vale, S.A.

18 BY: LEWIS J. LIMAN

JONATHAN I. BLACKMAN

19 MISHCON DE REYA LLP

Attorneys for Defendant BSG Resources Limited

20 BY: VINCENT FILARDO

21 SULLIVAN & WORCESTER LLP

Attorneys for Defendant Mahmoud Thiam

22 BY: PAUL E. SUMMIT

23 MARTIN J. AUERBACH

Attorney for BSG Resources defendants

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1 THE COURT: Good afternoon. I have on my calendar  
2 that we were going to talk about settlement, or you would let  
3 me know where things stand in that regard. There may be some  
4 other issues that you all have. I'm aware that there has been  
5 a brief submitted on personal jurisdiction. I don't think the  
6 opposition is due yet. I may have that wrong.

7 MR. LYLE: Yes, your Honor. Michael Lyle for Rio  
8 Tinto. Our opposition is due this coming Friday.

9 THE COURT: So, then I know also that there is some  
10 discussion going on with Judge Peck as to discovery. I'm not  
11 quite sure if that's still pending. I know there was a motion  
12 to compel presented to him. Was there an opposition as well?

13 MR. LYLE: Yes, your Honor, there was an opposition.  
14 We did take it up in front of Judge Peck last Friday. We think  
15 we've worked out many of the issues. Judge Peck has ordered us  
16 to get together with Vale and BSGR defendants to work out a  
17 process going forward. They had been taking the position that  
18 we needed to proceed exclusively under the Hague for purposes  
19 of discovery. We had taken a position that we weren't limited  
20 to that, but to a broader set of the rules, all of the federal  
21 rules. And so Judge Peck took that up.

22 We've come to a process where we're going to get  
23 together this Wednesday, I believe, to deal with those issues,  
24 to try to come up with a way to move forward so we can meet our  
25 deadlines.

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1 THE COURT: Good. Let me know if I can be helpful.  
2 I'm pretty much up to speed on the pendency of those issues. I  
3 did think from one of my memo endorsements that is something  
4 you should work out. And maybe you are. So fine.

5 MR. LYLE: We're hopeful we will be able to do that.

6 THE COURT: Is there any viable discussion of  
7 settlement at this time or no?

8 MR. LYLE: Your Honor, Michael Lyle again for Rio  
9 Tinto. We have had dialogue with each of the defendants  
10 separately. And at this point we've not made a great deal of  
11 progress. I think some of the defendants are waiting for your  
12 rulings on the motions to dismiss and I think some discovery  
13 before we get much further in our dialogue. But we have had,  
14 pursuant to your order, some discussions with each of the  
15 defendants that are here.

16 THE COURT: Great. Okay. Let me know if I can help  
17 you in any way.

18 Yes, sir.

19 MR. BLACKMAN: Jonathan Blackman for Vale. Just on a  
20 point of what's pending. Your Honor, besides the  
21 jurisdictional motions from some of the defendants, you also  
22 have 12(b)(6) motions.

23 THE COURT: I understand that. It's in one document.

24 MR. BLACKMAN: It's in one document. Question of  
25 settlement, there have been some discussions. I think it is

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1 fair to say that the demands from the plaintiffs are off the  
2 charts.

3 THE COURT: They usually are initially, right? Maybe  
4 not even initially. That's why they call them plaintiffs.

5 MR. BLACKMAN: We have indicated a disposition to talk  
6 about something that's reasonable. And Clovis Torres, who is  
7 the general counsel of Vale, came here today for that purpose.  
8 But, to say that the chasm is wide at the moment is probably an  
9 understatement, and I don't know how much the Court wants to  
10 hear about that.

11 THE COURT: Well, it is up to you. I'm happy to hear  
12 or not hear. I wanted to suggest, and you're also  
13 sophisticated counsel, you probably don't need my help. But  
14 certainly I would be available to help. I know Andy Peck would  
15 help you if you wanted that. Or, you probably know third  
16 parties that people typically turn to, JAMS, for example, and  
17 there is also a mediation program in the Southern District that  
18 would be available to you. All that would be available at no  
19 cost.

20 So all of those options you should avail yourself of  
21 as you see fit. And then of course yourselves, being so  
22 experienced, you could very well work things out.

23 MR. BLACKMAN: If I could just speak to, and cut me  
24 off if I'm getting where you don't want me to go on to the  
25 merits.

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1           Here's the issue from Vale's point of view. We  
2       perceive this as not just a commercial dispute. I say that  
3       because Rio Tinto and Vale are two of the biggest mining  
4       companies in the world, and they are competitors.

5           THE COURT: The two biggest, right?

6           MR. BLACKMAN: Yes. And we have really seen no  
7       evidence to support the basic allegations of this complaint.  
8       And what we do see is that the Simandou Block 1 and 2  
9       concession, which is the subject of this case, as your Honor  
10      knows, is going to be offered again for bidding, perhaps as  
11      soon as in the next several months. And two of the obvious  
12      potential bidders are Rio Tinto and Vale. And our perception  
13      is that this lawsuit is being brought not so much to collect  
14      money for alleged past injury, which we don't believe occurred,  
15      but to try to chill the bidding process going forward. And  
16      that's kind of enhanced by the fact that there was a rather  
17      inflammatory statement made by the chairman of Rio Tinto just  
18      last week in which he essentially said -- not in a pleading,  
19      but in a conference -- that implied that Vale was a thief.

20           This is not helpful to settlement, obviously, and it  
21      does bespeak a certain underlying motive for the lawsuit, which  
22      my client finds deeply distressing.

23           Having said that, we are prepared, because this is a  
24      business, to entertain some kind of a reasonable proposal. But  
25      frankly we haven't heard it.

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1 MR. LYLE: Your Honor, Michael Lyle for Rio Tinto.  
2 First of all, I was remiss and I failed to introduce Mr. Ryan  
3 Stanton who is a principal of Rio Tinto here.

4 THE COURT: It's nice to have you both here. Vale and  
5 Rio Tinto's representatives.

6 MR. LYLE: And your Honor, I think it goes without  
7 saying that what Mr. Blackman just said is completely and  
8 utterly false. I know you're shocked to hear us say that. He  
9 seems to look for opportunities --

10 THE COURT: Sometimes I think the clients would like  
11 to settle without the lawyers, and more often the lawyers might  
12 like to settle without the clients. Unfortunately, everybody's  
13 got to work with everyone.

14 MR. LYLE: I certainly would have been remiss in not  
15 pointing that out with my client sitting here that we  
16 vigorously disagree with everything that Mr. Blackman said.

17 THE COURT: I'm sure.

18 MR. LYLE: I want to make sure that was clear on the  
19 record.

20 THE COURT: It is not really a function of the record.  
21 It is, but I take it as in the nature of settlement  
22 discussions. And so for whatever that means, that's what they  
23 are.

24 MR. LYLE: I appreciate that, your Honor.

25 THE COURT: So, we're waiting for an opposition brief

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1 and there is going to be a reply brief. You will hopefully, I  
2 thought it seemed simpler than perhaps it is, that you had  
3 solved this discovery issue yourselves or certainly with the  
4 help of Judge Peck.

5 How far along are you on in discovery otherwise?

6 MR. LYLE: We have discovery coming in between Vale  
7 and Rio Tinto. We've agreed now on a protocol for purposes of  
8 ESI. And so now that we have that agreed to, Judge Peck will  
9 be entering an order we think sometime this coming week. So  
10 once that's in place, we will begin written discovery document  
11 production.

12 We've had some issues with respect to defendants VBG  
13 being able to access their documents, some of which were  
14 located in Guinea, and some other documents that have been  
15 seized by the government of Guinea in connection with their  
16 investigation into the issues that are at the heart of our  
17 case. We've worked through those. The government of Guinea is  
18 now reviewing various documents. We're hopeful we will be  
19 having those produced.

20 With respect to the BSGR defendant, we are, as we  
21 indicate earlier, we'll have a meeting this week.

22 So we've made progress on I think almost all of the  
23 outstanding issues. If we can't come to agreement with respect  
24 to BSGR, we will then of course avail ourselves to your offer  
25 to assist in the discovery.

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1 MR. LIMAN: Your Honor, with respect to Vale, I  
2 believe we are the only defendant to have served discovery on  
3 Rio Tinto. We have had some issues with respect to the  
4 timeliness of their production. We've addressed those in front  
5 of Judge Peck, and continue to address those.

6 MR. SUMMIT: Paul Summit for defendant Thiam. Just a  
7 correction. We have served discovery on Rio Tinto as well, and  
8 are waiting for the protocols to be developed.

9 THE COURT: Okay. Anybody else want to be heard?  
10 Well, I just wanted you to know we're here and available to  
11 help as best we can. Just let us know.

12 Great. Thanks so much. Nice to see you all.

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